

FILED

2017 MAR -6 PM 2: 11

MARY L. SWAIN  
BUTLER COUNTY  
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS  
BUTLER COUNTY, OHIO

DOREEN BARROW, et al.,

Plaintiffs

v.

VILLAGE OF NEW MIAMI, et al.,

Defendants

Case No. CV 2013 07 2047

Judge: Oster

AFFIDAVIT OF JOSHUA ENGEL IN  
ACCORDANCE WITH FEBRUARY 8,  
2017 ORDER OF COURT

Joshua A. Engel, after being first duly cautioned and sworn according to law, does hereby depose and state the following:

1. I am over 18 years of age and competent to testify. I am a member of the Bar of the State of Ohio and the Commonwealth of Massachusetts (inactive). I am also a member of the Bar of the U.S. Supreme Court, the First, Fifth and Sixth Circuit Courts of Appeals, and the Federal District Courts for the Southern District of Ohio, the Northern District of Ohio, and the District of Massachusetts. I am a 1995 graduate of the Harvard University Law School.
2. I am making this affidavit in accordance with the Court's February 8, 2017 Order to provide an affidavit evincing all monies paid under the invalidated ordinance, along with an excel spreadsheet, so that the Court can set the proper amount of restitution/refund.
3. A CD with 3 excel files accompanies this Affidavit. This CD is marked as Exhibit A.
  - a. I am one of the attorneys representing the Plaintiff class in this matter. As part of this representation, I have obtained from OptoTraffic, LLC and the Village spreadsheets

of all payments received from class members under the Automated Traffic Enforcement System (“ATES”) operated by Defendant the Village of New Miami (the “Village”). These files show the identity of each class member, along with the date and amounts of payments made by each class member.

- b. The original file provided by OptoTraffic, LLC is titled: NM-citation-payments.csv. An affidavit from the OptoTraffic, LLC Keeper of Records is attached to this Affidavit as Exhibit B.
  - c. A comparable file obtained from the Village in response to a discovery request is titled: “Traffic Citations 02-17-17.xlsx”.<sup>12</sup>
  - d. The file used to calculate the amount due to class members is titled: “Class Members and Payments.xlsx”. This file is based on the file provided by OptoTraffic, LLC. Unless otherwise indicated, all calculations discussed below appear on this spreadsheet.
4. Class members are entitled to interest in the amount of \$367,560.13. The calculation behind this figure is illustrated on the spreadsheet “Class Members and Payments” as follows:
- a. OptoTraffic, LLC collected a total of \$3,066,422.11 from class members on behalf of the Village.
  - b. I created a column titled, “Interest.” This is the amount of interest owed to each class member based on the amount of the initial payment and the date the payment was

---

<sup>1</sup> The calculations in this Affidavit are based upon the spreadsheet and data provided by Optotrafic, LLC. Unlike OptoTraffic, LLC, the Village has refused to provide an affidavit attesting to the accuracy of its numbers or that these are the data maintained as a regular course of business.

made.<sup>3</sup> I used interest at an annual rate of 3% as provided for in R.C. 1343.03 and set by the Ohio Tax Commissioner for claims arising from 2012 through 2014.<sup>4</sup>

c. I created a column titled, "Refund due." This is the total amount due to each class member calculated by adding the payment made to the Village and the amount of interest.

5. I have calculated that the class, as a whole, is entitled to the restitution in the amount of \$3,433,982.24, as of the date of this Affidavit. Please note that interest would continue to accrue post-judgment according to law.
6. I note that the spreadsheet provided by the Village shows total collections of \$3,066,523.55 and refunds issued in the amount of \$140.65. This differs slightly (\$39.21) from the totals provided by Optotraffic, LLC. I cannot account for this difference.
7. All told, the four law firms representing the named plaintiffs and the Class Members advanced necessary and reasonable litigation expenses totaling \$1237.10. This includes clerk and filing fee of \$461.00 and transcript fees of \$776.10.
8. The six class representatives, Doreen Barrow, Diane Woods, Michelle Johnson, Don Muirheid, Rick Doepke and Michele McGuire expended substantial time and effort representing the class, including conferring with Class Counsel and having their depositions taken.
9. Each of the class representatives agreed to a one-third contingent fee agreement with counsel. These agreements provide that attorneys' fees would be contingent upon the

---

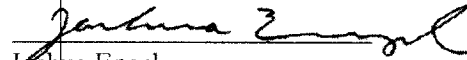
<sup>3</sup> Two entries in the OptoTraffic, LLC database did not include dates of payments by the class member. In that situation, I used the date of the preliminary injunction ordered by Judge Sage (March 11, 2014.)

<sup>4</sup> In 2017 the rate set by the Tax Commissioner has increased to 4%. This higher rate would be applied to the post-judgment amount due to the class members. See [http://www.tax.ohio.gov/ohio\\_individual/individual/interest\\_rates.aspx](http://www.tax.ohio.gov/ohio_individual/individual/interest_rates.aspx)

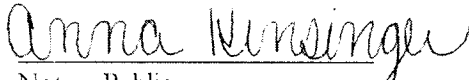
result obtained and that there would be no legal obligation by the clients to pay any fee if nothing is recovered from the adversary. The clients were further informed that “this matter is being pursued as a Class Action, and that if the case is successfully resolved as a Class Action, counsel fees will be determined and approved by the Court overseeing the litigation.” Finally, the clients were informed that “class action awards in these cases typically equal 33.33 percent of the total awarded to the class.”

FURTHER AFFLIANT SAYETH NAUGHT.

State of Ohio  
Warren County

  
Joshua Engel

Subscribed and sworn before me this 6th day of March 2017.

  
Notary Public

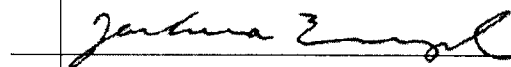


**ANNA KINSINGER**  
**NOTARY PUBLIC**  
**STATE OF OHIO**  
My Commission Expires  
March 31, 2021

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this document was served on counsel for all parties by email.

Respectfully submitted,



Date: March 6, 2017

Exhibit A

CD Attached.



IN THE COURT OF COMMON PLEAS  
BUTLER COUNTY, OHIO

DOREEN BARROW, et al.,

Plaintiffs

v.

VILLAGE OF NEW MIAMI, et al.,

Defendants

Case No. CV 2013 07 2047

Judge: Oster

AFFIDAVIT OF KEEPER OF RECORDS

State of Maryland )

County of Prince George's )

Thomas Bouchard, being duly sworn on oath, does depose and testify as follows:

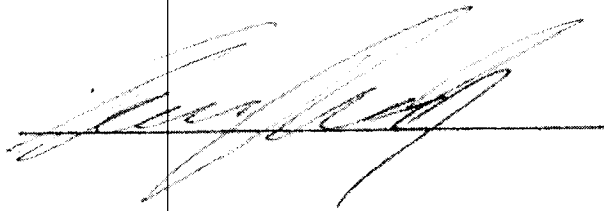
1. I am the Chief Executive Officer for Optotraffic, LLC ("Optotraffic"), and as such, I am knowledgeable about Optotraffic's recordkeeping.
2. Pursuant to a contract, Optotraffic provided automated traffic enforcement services ("ATES") to the Village of New Miami, Ohio.
3. In response to a subpoena, Optotraffic provided a data file named: "nm-citation-payments.csv". This data file contains the records compiled by Optotraffic showing the following information for each payment made under the Village of New Miami's ATES:

- Vehicle Owner/Driver
- Address
- License Plate
- City
- State
- Zip Code
- Citation Number
- Issued ate
- Fee Type
- Fee Amount
- Payment Date
- Payment Amount
- Outstanding Balance

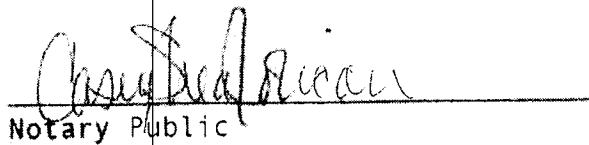
4. The information contained in the data file represent records, or a data compilation, of acts, events, or conditions, made at or near the time by, or from information transmitted by, a person with knowledge. The information was kept by Optotrafic in the course of a regularly conducted business activity, and it was the regular practice of Optotrafic to make the records, or data compilation.

5. Under the data file Column I "Fec Type" the acronym definitions are as follows:

LTE = First late fee  
LTP = Second late fee  
DIS = Dismissed  
VIO = Violation  
BCQ = Bad check  
CTF = Court Costs



Sworn to and subscribed before me, a Notary Public in and  
for said county and state, this 24<sup>th</sup> day of  
February, 2017.

  
Notary Public

(SEAL)

My Commission Expires  
December 09, 2019